

## **FINAL TEXT OF PROPOSED REGULATIONS**

In the following, underline indicates adopted text and ~~strikethrough~~ indicates deleted text.

### **Chapter 1. Rules and Regulations of Adult Operations and Programs**

#### **Article 8. Appeals**

##### **3084. Definitions.**

For the purpose of Article 8, the following definitions shall apply:

- (a) Appellant means an inmate or parolee who has submitted an appeal.
- (b) General allegations means allegations that lack specificity or factual evidence to support them.
- (c) Material adverse effect means a harm or injury that is measurable or demonstrable, or the reasonable likelihood of such harm or injury. In either case, the harm or injury must be due to any policy, decision, action, condition, or omission by the department or its staff.
- (d) Modification order means an order by the institution, parole region, or third level Appeals Chief directing a previous decision to be modified.
- (e) Remedy means a process or means to address an issue or correct a wrong.
- (f) Reviewer means the individual with signature authority for the approval or disapproval of an appeal response at any level.
- (g) Staff misconduct means staff behavior that violates or is contrary to law, regulation, policy, procedure, or an ethical or professional standard.
- (h) Supporting documents means documents that are needed to substantiate allegations made in the appeal including, but not limited to, classification chronos, property inventory sheets, property receipts, disciplinary reports with supplements, incident reports, notifications of disallowed mail, trust account statements, memoranda or letters, medical records and written requests for interviews, items or services. Supporting documents do not include documents that simply restate the matter under appeal, argue its merits, or introduce new issues not identified in the present appeal form.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

##### **3084.1. Right to Appeal.**

The appeal process is intended to provide a remedy for inmates and parolees with identified grievances and to provide an administrative mechanism for review of departmental policies, decisions, actions, conditions, or omissions that have a material adverse effect on the welfare of inmates and parolees. All appeals shall be processed according to the provisions of Article 8, Appeals, unless exempted from its provisions pursuant to court order or superseded by law or other regulations.

- (a) Any inmate or parolee under the department's jurisdiction may appeal any policy, decision, action, condition, or omission by the department or its staff that the inmate or parolee can demonstrate as having a material adverse effect upon his or her health, safety, or welfare.
- (b) Unless otherwise stated in these regulations, all appeals are subject to a third level of review, as described in section 3084.7, before administrative remedies are deemed exhausted. All lower level reviews are subject to modification at the third level of review. Administrative remedies shall not be considered exhausted relative to any new issue, information, or person later named by the appellant that was not included in the originally submitted CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, which is incorporated by reference, and addressed through all required levels of administrative review up to and including the third level. In addition, a cancellation or rejection decision does not exhaust administrative remedies.
- (c) Department staff shall ensure that inmates and parolees, including those who have difficulties communicating, are provided equal access to the appeals process and the timely assistance necessary to participate throughout the appeal process.

(d) No reprisal shall be taken against an inmate or parolee for filing an appeal. This shall not prohibit appeal restrictions against an inmate or parolee abusing the appeal process as defined in section 3084.4, nor shall it prohibit the pursuit of disciplinary sanctions for violation of department rules.

(e) The department shall ensure that its departmental appeal forms for appeal of decisions, actions or policies within its jurisdiction are readily available to all inmates and parolees.

(f) An inmate or parolee has the right to file one appeal every 14 calendar days unless the appeal is accepted as an emergency appeal. The 14 calendar day period shall commence on the day following the appellant's last accepted appeal.

(g) An appellant shall adhere to appeal filing time constraints as defined in section 3084.8.

**Reference citation amended to read:**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections ~~832.5(a)~~ and 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; and Wolff v. McDonnell (1974) 418 U. S. 539, 558-560.

**3084.2. Appeal Preparation and Submittal.**

(a) The appellant shall use a CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, to describe the specific issue under appeal and the relief requested. A CDCR Form 602-A (08/09), Inmate/Parolee Appeal Form Attachment, which is incorporated by reference, shall be used if additional space is needed to describe the issue under appeal or the relief requested.

(1) The inmate or parolee is limited to one issue or related set of issues per each Inmate/Parolee Appeal form submitted. The inmate or parolee shall not combine unrelated issues on a single appeal form for the purpose of circumventing appeal filing requirements. Filings of appeals combining unrelated issues shall be rejected and returned to the appellant by the appeals coordinator with an explanation that the issues are deemed unrelated and may only be submitted separately.

(2) The inmate or parolee is limited to the space provided on the Inmate/Parolee Appeal form and one Inmate/Parolee Appeal Form Attachment to describe the specific issue and action requested. The appeal content must be printed legibly in ink or typed on the lines provided on the appeal forms in no smaller than a 12-point font. There shall be only one line of text on each line provided on these forms.

(3) The inmate or parolee shall list all staff member(s) involved and shall describe their involvement in the issue. To assist in the identification of staff members, the inmate or parolee shall include the staff member's last name, first initial, title or position, if known, and the dates of the staff member's involvement in the issue under appeal. If the inmate or parolee does not have the requested identifying information about the staff member(s), he or she shall provide any other available information that would assist the appeals coordinator in making a reasonable attempt to identify the staff member(s) in question.

(4) The inmate or parolee shall state all facts known and available to him/her regarding the issue being appealed at the time of submitting the Inmate/Parolee Appeal form, and if needed, the Inmate/Parolee Appeal Form Attachment.

**Subsection 3084.2(b) is amended to read:**

(b) The inmate or parolee shall submit the signed original appeal forms and ~~original~~ supporting documents. If originals are not available, copies may be submitted with an explanation why the originals are not available. The appeals coordinator shall have the discretion to request that any submitted copy is verified by staff.

(1) Only supporting documents, as defined in subsection 3084(h), necessary to clarify the appeal shall be attached to the appeal. Attachments shall not raise new issues, but shall only serve to clarify the present appeal issue and action(s) requested as stated in Parts A and B of the Inmate/Parolee Appeal form. New issues raised in the supporting documents shall not be addressed and any decision rendered will pertain only to the present appeal issue and requested action(s).

(2) Inmates or parolees shall submit their appeal documents in a single mailing and shall not divide their appeal documents into separate mailings.

(3) Inmates or parolees shall not deface or attach dividers or tabs to their appeal forms.

(4) Inmates or parolees shall not contaminate or attach physical/organic objects or samples to their appeal documents. Examples of these objects or samples include, but are not limited to, food, clothing, razor blades, books, magazines, tape, string, hair, blood, and/or bodily fluids/excrement.

(c) First and second level appeals as described in section 3084.7 shall be submitted to the appeals coordinator at the institution or parole region for processing.

(d) If dissatisfied with the second level response, the appellant may submit the appeal for a third level review, as described in section 3084.7, provided that the time limits pursuant to section 3084.8 are met. The appellant shall mail the appeal and supporting documents to the third level Appeals Chief via the United States mail service utilizing his or her own funds, unless the appellant is indigent in which case the mailing of appeals to the third level of review shall be processed in accordance with indigent mail provisions pursuant to section 3138.

**Subsection 3084.2(e) is amended to read:**

(e) If the appeal has been accepted and processed as an emergency appeal and the appellant wishes a third level review, the appellant must forward the appeal to the appeals coordinator who shall electronically transmit it to the third level Appeals Chief ~~for a third level response to comply with emergency time limits.~~ The third level review shall be completed within five working days.

**Subsection 3084.2(f) is amended to read:**

(f) An inmate or parolee or other person may assist another inmate or parolee with preparation of an appeal unless the act of providing such assistance would create an unmanageable situation including but not limited to: acting contrary to the principles set forth in sections 3163 and 3270, allowing one offender to exercise unlawful influence/assume control over another, require an offender to access unauthorized areas or areas which would require ~~ing~~ an escort, or cause ~~ing~~ avoidance or non-performance in assigned work and program activities. Inmates or parolees shall not give any form of compensation for receiving assistance or receive any form of compensation for assisting in the preparation of another's appeal. The giving or receiving of compensation is considered misconduct and is subject to disciplinary action.

(g) An inmate or parolee shall not submit an appeal on behalf of another person.

(h) Group appeal. If a group of inmates/parolees intend to appeal a policy, decision, action, condition or omission affecting all members of the group, one CDCR Form 602, Inmate/Parolee Appeal, shall be submitted describing the appeal issue(s) and action requested, accompanied by a CDCR Form 602-G (08/09), Inmate/Parolee Group Appeal, which is incorporated by reference, with the legible name, departmental identification number, assignment, housing, and dated signature of the inmate or parolee who prepared the appeal. Each page of the CDCR Form 602-G must contain the appeal issue, action requested, and a statement that all the undersigned agree with the appeal issue/action requested.

(1) The legible names of the participating inmates/parolees, departmental identification numbers, assignments, housing, and dated signatures shall be included in the space provided on the Inmate/Parolee Group Appeal form and no other signature page shall be accepted by the appeals coordinator.

(2) The inmate or parolee submitting the appeal shall be responsible for sharing the appeal response with the inmates or parolees who signed the appeal attachment.

(3) If the inmate or parolee submitting the appeal is transferred, released, discharged, or requests to withdraw from the group appeal, responses shall be directed to the next inmate or parolee listed on the appeal attachment who remains at the facility/region, and who shall be responsible for sharing the response with the other inmates or parolees identified on the appeal.

(4) An appeal shall not be accepted or processed as a group appeal if the matter under appeal requires a response to a specific set of facts (such as disciplinary and staff complaint appeals) that are not the same for all participants in the appeal. In such case, the group appeal shall be screened out and returned to the inmate or parolee submitting the appeal with directions to advise all those who signed the appeal attachment to submit individual appeals on their separate issues.

(5) Every inmate or parolee who signs a group appeal is ineligible to submit a separate appeal on the same issue.

**Subsection 3084.2(h)(6) is amended to read:**

- (6) A group appeal counts towards each appellant's allowable number of appeals filed in a 14 calendar day period.
- (i) Multiple appeals of the same issue. When multiple appeals are received from more than one inmate or parolee on an identical issue, each such appeal shall be individually processed. However, if other issues in addition or extraneous to the multiple appeal issue are contained in the submitted appeal, this particular complaint shall not be processed as a multiple appeal, but will be subject to processing as a separate, individual appeal.
- (1) The original inmate or parolee, and as needed for clarification of issues, one or more of the other inmates or parolees, shall be interviewed.
- (2) The appellant shall be provided with an appeal response. A statement shall be included in the response indicating that the appeal has been designated as one of multiple identical appeals for processing purposes and the same response is being distributed to each appellant.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5(a) and 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations.

**3084.3. Supporting Documents.**

- (a) An inmate or parolee shall obtain and attach all supporting documents, as described in section 3084(h), necessary for the clarification and/or resolution of his or her appeal issue prior to submitting the appeal to the appeals coordinator.

**Subsection 3084.3(b) is amended to read:**

- (b) The inmate or parolee shall not delay submitting an appeal within time limits established in section 3084.8 if unable to obtain supporting documents, but shall submit the appeal with all available supporting documents and in Part B of their CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, provide an explanation why any remaining supporting documents are not available. Time limits for filing an appeal are not stayed by failure to obtain supporting documentation and commence as set forth in subsection 3084.8(~~ab~~).
- (c) Failure to attach all necessary supporting documents may result in the appeal being rejected as specified in subsection 3084.6(b)(7). The appeals coordinator shall inform the inmate or parolee that the appeal is rejected because necessary supporting documents are missing. The appellant shall be allowed an additional 30 calendar days to secure any missing supporting documents and resubmit the appeal.
- (d) The appeals coordinator may grant additional time extensions beyond the initial 30 calendar day extension if the inmate or parolee submits a reasonable explanation of why the supporting documents still are not available.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

**3084.4. Appeal System Abuse.**

- (a) The following are deemed misuse or abuse of the appeals process and may lead to appeal restriction as described in subsection 3084.4(g).
- (1) The submittal of more than one appeal for initial review within a 14 calendar day period is considered excessive, unless the inmate or parolee is submitting an emergency appeal.
- (2) The repeated filing of appeals that have been cancelled pursuant to subsection 3084.6(c).

**Subsection 3084.4(a)(3) is amended to read:**

- (3) The appeal submission contains information the appellant knows to be false or consists of a deliberate attempt at distorting the facts, ~~including mischaracterizing a grievance as one that requires emergency processing as provided in subsection 3084.9(a).~~
- (4) The appeal contains threatening, grossly derogatory, slanderous or obscene statements and/or organic contamination is included in or makes up any part of the appeal package.
- (5) The description of the problem and/or requested action deliberately exceeds the space provided on the 602 forms or the appeal is intentionally filed contrary to instructions.

(b) When an inmate or parolee submits appeals as described above in subsections 3084.4(a)(1)-(a)(5):

(1) The first appeal received shall be screened for routine processing.

(2) All subsequent non-emergency appeals submitted by that individual shall be screened and the appeals coordinator shall begin documenting any abuse as evidenced by the screening results.

(c) If an inmate or parolee persists in submitting excessive, demonstrably false, noncompliant or abusive appeals, as described in subsection 3084.4(a), he or she shall receive a warning letter from the appeals coordinator that will document the history and nature of appeal system abuse.

(d) If the abuse of process continues after the issuance of a warning letter, the appeals coordinator shall meet with the inmate or parolee in a timely manner before imposition of any restriction to provide instruction for the appropriate use of the appeals process and to rule out any unintended basis for non-compliance. If a face-to-face meeting is not possible, an agent acting on behalf of the appeals coordinator shall conduct the meeting.

(e) Excessive, demonstrably false, noncompliant or abusive appeals, as described in subsection 3084.4(a), submitted by an inmate or parolee after the issuance of a warning letter, pursuant to subsection 3084.4(c) above, shall be screened by the appeals coordinator to ensure they do not contain qualifying emergency issues.

(1) If the appeal contains emergency issues, as described in subsection 3084.9(a)(1), it shall be processed as an emergency appeal.

(2) If no such issue is determined to be present, the appeal shall be retained by the appeals coordinator pending placement of the appellant on appeal restriction by the third level Appeals Chief. The appellant shall be informed in writing why the appeal constitutes abuse of the appeal process and informed that appeal processing has been suspended pending determination of appeal restriction status.

(f) If the appeal abuse continues after the issuance of a warning letter and a face-to-face meeting, the request for placement on restriction shall be referred to the third level Appeals Chief for approval.

(g) Upon confirmation of continued abuse and verification that a face-to-face interview and warning letter have occurred, the third level Appeals Chief shall have the discretion to authorize preparation of a notice by the Appeals Coordinator restricting the inmate or parolee to one non-emergency appeal every 30 calendar days for a period of one year. Any subsequent violation of the appeal restriction shall result in an extension of the restriction for an additional one-year period upon approval by the third level Appeals Chief.

(h) If the third level Appeals Chief makes a decision not to place the inmate or parolee on appeal restriction, any appeal submitted by the inmate or parolee and retained pursuant to subsection 3084.4(e)(2) shall be returned to the inmate or parolee who may then resubmit a returned appeal if he or she desires to do so. Resubmitted appeals are not exempt from the standard submittal requirements set forth in this Article, except that the appellant's original submittal date of the appeal may serve to satisfy filing time requirements.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 148.6(a), 832.5(c) and 5054, Penal Code.

### **3084.5. Screening and Managing Appeals.**

(a) Each institution head and parole region administrator shall designate an appeals coordinator at a staff position level no less than a Correctional Counselor II or Parole Agent II.

(b) The appeals coordinator or a delegated staff member under the direct oversight of the coordinator shall screen all appeals prior to acceptance and assignment for review.

(1) When an appeal indicates the inmate or parolee has difficulty describing the problem in writing or has a primary language other than English, the appeals coordinator shall ensure that the inmate or parolee receives assistance in completing and/or clarifying the appeal.

(2) When an appeal is received as an emergency appeal that does not meet the criteria for an emergency appeal as defined in subsection 3084.9(a), the appellant shall be notified that the appeal does not meet the criteria for processing as an emergency appeal and has been either accepted for regular processing or is rejected for the specific reason(s) cited.

(3) When an appeal is not accepted, the inmate or parolee shall be notified of the specific reason(s) for the rejection or cancellation of the appeal and of the correction(s) needed for the rejected appeal to be accepted.

(4) When an appeal is received that describes staff behavior or activity in violation of a law, regulations, policy, or procedure or appears contrary to an ethical or professional standard that could be considered misconduct as defined in subsection 3084(g), whether such misconduct is specifically alleged or not, the matter shall be referred pursuant to subsection 3084.9(i)(1) and (i)(3), to determine whether it shall be:

(A) Processed as a routine appeal but not as a staff complaint.

(B) Processed as a staff complaint appeal inquiry.

(C) Referred to Internal Affairs for an investigation/inquiry.

(5) If an appeal classified as a staff complaint includes other non-related issue(s), the provisions of 3084.9(i)(2) shall apply.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5, 832.7, 832.8, 5054 and 5058.4(a), Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations.

#### **3084.6. Rejection, Cancellation, and Withdrawal Criteria.**

(a) Appeals may be rejected pursuant to subsection 3084.6(b), or cancelled pursuant to subsection 3084.6(c), as determined by the appeals coordinator.

(1) Unless the appeal is cancelled, the appeals coordinator shall provide clear and sufficient instructions regarding further actions the inmate or parolee must take to qualify the appeal for processing.

(2) An appeal that is rejected pursuant to subsection 3084.6(b) may later be accepted if the reason noted for the rejection is corrected and the appeal is returned by the inmate or parolee to the appeals coordinator within 30 calendar days of rejection.

(3) At the discretion of the appeals coordinator or third level Appeals Chief, a cancelled appeal may later be accepted if a determination is made that cancellation was made in error or new information is received which makes the appeal eligible for further review.

(4) Under exceptional circumstances any appeal may be accepted if the appeals coordinator or third level Appeals Chief conclude that the appeal should be subject to further review. Such a conclusion shall be reached on the basis of compelling evidence or receipt of new information such as documentation from health care staff that the inmate or parolee was medically or mentally incapacitated and unable to file.

(5) Erroneous acceptance of an appeal at a lower level does not preclude the next level of review from taking appropriate action, including rejection or cancellation of the appeal.

(b) An appeal may be rejected for any of the following reasons, which include, but are not limited to:

(1) The appeal concerns an anticipated action or decision.

(2) The appellant has failed to demonstrate a material adverse effect on his or her welfare as defined in subsection 3084(c).

(3) The inmate or parolee has exceeded the allowable number of appeals filed in a 14 calendar day period pursuant to the provisions of subsection 3084.1(f).

(4) The appeal contains threatening, obscene, demeaning, or abusive language.

(5) The inmate or parolee has attached more than one CDCR Form 602-A (08/09), Inmate/Parolee Appeal Form Attachment.

(6) The appeal makes a general allegation, but fails to state facts or specify an act or decision consistent with the allegation.

(7) The appeal is missing necessary supporting documents as established in section 3084.3.

- (8) The appeal involves multiple issues that do not derive from a single event, or are not directly related and cannot be reasonably addressed in a single response due to this fact.
- (9) The appeal issue is obscured by pointless verbiage or voluminous unrelated documentation such that the reviewer cannot be reasonably expected to identify the issue under appeal. In such case, the appeal shall be rejected unless the appellant is identified as requiring assistance in filing the appeal as described in subsection 3084.1(c).
- (10) The inmate or parolee has not submitted his/her appeal printed legibly in ink or typed on the lines provided on the appeal forms in no smaller than a 12-point font or failed to submit an original.
- (11) The appeal documentation is defaced or contaminated with physical/organic objects or samples as described in subsection 3084.2(b)(4). Appeals submitted with hazardous or toxic material that present a threat to the safety and security of staff, inmates, or the institution may subject the appellant to disciplinary action and/or criminal charges commensurate with the specific act.
- (12) The appellant has attached dividers or tabs to the appeal forms and/or supporting documents.
- (13) The appeal is incomplete; for example, the inmate or parolee has not provided a signature and/or date on the appeal forms in the designated signature/date blocks provided.
- (14) The inmate or parolee has not submitted his/her appeal on the departmentally approved appeal forms.
- (15) The inmate or parolee has submitted the appeal for processing at an inappropriate level bypassing required lower level(s) of review, e.g., submitting an appeal at the third level prior to lower level review.
- (16) The appeal issue or complaint emphasis has been changed at some point in the process to the extent that the issue is entirely new, and the required lower levels of review and assessment have thereby been circumvented.
- (c) An appeal may be cancelled for any of the following reasons, which include, but are not limited to:
- (1) The action or decision being appealed is not within the jurisdiction of the department.
- (2) The appeal duplicates an inmate or parolee's previous appeal upon which a decision has been rendered or is pending.
- (3) The inmate or parolee continues to submit a rejected appeal while disregarding appeal staff's previous instructions to correct the appeal including failure to submit necessary supporting documents, unless the inmate or parolee provides in Part B of the CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, a reasonable explanation of why the correction was not made or documents are not available.
- (4) Time limits for submitting the appeal are exceeded even though the inmate or parolee had the opportunity to submit within the prescribed time constraints. In determining whether the time limit has been exceeded, the appeals coordinator shall consider whether the issue being appealed occurred on a specific date or is ongoing. If the issue is ongoing, which may include but is not limited to, continuing lockdowns, retention in segregated housing, or an ongoing program closure, the inmate or parolee may appeal any time during the duration of the event; however, the inmate or parolee is precluded from filing another appeal on the same issue unless a change in circumstances creates a new issue.
- (5) The appeal is submitted on behalf of another person.
- (6) The issue is subject to a department director level review independent of the appeal process such as a Departmental Review Board decision, which is not appealable and concludes the appellant's departmental administrative remedy pursuant to the provisions of section 3376.1.
- (7) The appellant is deceased before the time limits for responding to an appeal have expired and the appeal is not a group appeal.
- (8) The appellant refuses to be interviewed or to cooperate with the reviewer.
- (A) The appellant's refusal to be interviewed or to cooperate with the reviewer shall be clearly articulated in the cancellation notice.
- (B) If the appellant provides sufficient evidence to establish that the interviewer has a bias regarding the issue under appeal, the appeals coordinator shall assign another interviewer.

- (9) The appeal is presented on behalf of a private citizen.
- (10) Failure to correct and return a rejected appeal within 30 calendar days of the rejection.
- (11) The issue under appeal has been resolved at a previous level.
- (d) Group appeals shall not be cancelled at the request of the submitting individual unless all of the inmate signatories are released, transferred, or agree to withdraw the appeal.
- (e) Once cancelled, an appeal shall not be accepted except pursuant to subsection 3084.6(a)(3); however, the application of the rules provided in subsection 3084.6(c) to the cancelled appeal may be separately appealed. If an appeal is cancelled at the third level of review, any appeal of the third level cancellation decision shall be made directly to the third level Appeals Chief.
- (f) An appeal may be withdrawn by the appellant by requesting to have the processing stopped at any point up to receiving a signed response. The request for the withdrawal shall identify the reason for the withdrawal in section H of the CDCR Form 602, Inmate/Parolee Appeal and shall be signed and dated by the appellant. If there is an agreed upon relief noted in writing at the time of a withdrawal and the relief is not provided when and as promised, then the failure to provide the agreed upon relief may be appealed within 30 calendar days of the failure to grant the promised relief. The withdrawal of an appeal does not preclude further administrative action by the department regarding the issue under appeal. A withdrawn staff complaint shall be returned to the hiring authority to review for possible further administrative action.

**Reference citation is amended to read:**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5 and 5054, Penal Code; Sections 19570, 19575.5, 19583.5 and 19635, Government Code.

**3084.7. Levels of Appeal Review and Disposition.**

- (a) All appeals shall be initially submitted and screened at the first level unless the first level is exempted. The appeals coordinator may bypass the first level for appeal of:
  - (1) A policy, procedure or regulation implemented by the department.
  - (2) A policy or procedure implemented by the institution head.
  - (3) An issue that cannot be resolved at the division head level such as Associate Warden, Associate Regional Parole Administrator, PIA manager or equivalent.
  - (4) Serious disciplinary infractions.
- (b) The second level is for review of appeals denied or not otherwise resolved to the appellant's satisfaction at the first level, or for which the first level is otherwise waived by these regulations. The second level shall be completed prior to the appellant filing at the third level as described in subsection 3084.7(c).
  - (1) A second level of review shall constitute the department's final action on appeals of disciplinary actions classified as "administrative" as described in section 3314, or of minor disciplinary infractions documented on the CDC Form 128-A (rev. 4-74), Custodial Counseling Chrono, pursuant to section 3312(a)(2), and shall exhaust administrative remedy on these matters.
  - (2) Movies/videos that have been given a rating of other than "G", "PG", or "PG-13" by the Motion Picture Association of America are not approved for either general inmate viewing pursuant to section 3220.4 or for viewing within the classroom, and will not be accepted for appeal at any level. The first level shall be waived for appeals related to the selection or exclusion of a "G", "PG", or "PG-13" rated or non-rated movie/video for viewing and the second level response shall constitute the department's final response on appeals of this nature.
  - (3) Civil addict/releasee exclusion appeals. Civil addicts or releasees may appeal a staff recommendation for exclusion from the civil addict program, unless the recommendation is based upon a commitment to prison, deportation, or releasee-at-large status. A second level review shall constitute the department's final response on appeals of this type.
- (c) The third level is for review of appeals not resolved at the second level, or:



- (1) When the inmate or parolee appeals alleged third level staff misconduct or appeals a third level cancellation decision or action.
- (2) In the event of involuntary psychiatric transfers as provided in subsection 3084.9(b).
- (d) Level of staff member conducting review.
  - (1) Appeal responses shall not be reviewed and approved by a staff person who:
    - (A) Participated in the event or decision being appealed. This does not preclude the involvement of staff who may have participated in the event or decision being appealed, so long as their involvement with the appeal response is necessary in order to determine the facts or to provide administrative remedy, and the staff person is not the reviewing authority and/or their involvement in the process will not compromise the integrity or outcome of the process.
    - (B) Is of a lower administrative rank than any participating staff. This does not preclude the use of staff, at a lower level than the staff whose actions or decisions are being appealed, to research the appeal issue.
    - (C) Participated in the review of a lower level appeal refiled at a higher level.
  - (2) Second level review shall be conducted by the hiring authority or designee at a level no lower than Chief Deputy Warden, Deputy Regional Parole Administrator, or the equivalent.
  - (3) The third level review constitutes the decision of the Secretary of the California Department of Corrections and Rehabilitation on an appeal, and shall be conducted by a designated representative under the supervision of the third level Appeals Chief or equivalent. The third level of review exhausts administrative remedies; however, this does not preclude amending a finding previously made at the third level.
  - (e) At least one face-to-face interview shall be conducted with the appellant at the first level of review, or the second level if the first level of review is bypassed, unless:
    - (1) The appellant waives the interview by initialing the appropriate box on the CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal. An appellant's waiver of the interview shall not preclude staff from conducting an interview in the event of staff determination that an interview is necessary.
    - (2) The reviewer has decided to grant the appeal in its entirety.
    - (3) The appeal is a request for a Computation Review Hearing, in which case the initial interview shall occur at the second level of review.
    - (4) The appellant is not present at the institution or parole region where the appeal was filed.
      - (A) In such case, a telephone interview with the appellant shall meet the requirement of a personal interview. If the appeal concerns a disciplinary action, the telephone interview may be waived if the appeals coordinator determines an interview would not provide additional facts.
      - (B) The response must note that the interview was conducted by telephone, explain the extraordinary circumstances that required it, and state why a face-to-face interview was not possible under the circumstances.
      - (C) If the appellant is not available for a telephone interview, the reviewer may request that a suitable employee in the jurisdiction where the appellant is located complete the interview and provide a report.
    - (f) An interview may be conducted at any subsequent level of review when staff determine that the issue under appeal requires further clarification.
    - (g) When a group or multiple appeal is received, one or more of the participating inmates/parolees shall be interviewed to clarify the issue(s).
    - (h) At the first and second level of review, the original appeal, within the time limits provided in section 3084.8, shall be returned to the appellant with a written response to the appeal issue providing the reason(s) for each decision. Each response shall accurately describe the matter under appeal and fully address the relief requested. If the decision is a partial grant, the response shall clarify for each requested action whether it is granted, granted in part, or denied, and shall also state the action taken.

(i) Modification orders issued by the institution, parole region, or by the third level of review shall be completed within 60 calendar days of the appeal decision which determined the need for a modification order. Reasonable documented proof of completion of the modification order shall accompany the completed order, or a statement shall be added by the responder clarifying the action taken and why documentation is not available.

(1) If it is not possible to comply with the modification order within 60 calendar days, staff responsible for complying with the modification order shall advise the local appeals coordinator every 30 calendar days of the reason for the delay and provide a projected date of completion. If the modification order was imposed by the third level of review, the local appeals coordinator shall notify the third level Appeals Chief every 30 calendar days of the reason for the delay and provide a projected date of completion.

(2) When it is clear that the modification order cannot be completed in the allotted time, the appeals coordinator shall advise the appellant of the reason for the delay and the anticipated date of completion. This process shall occur every 30 calendar days until the modification order is completed. All time constraints for an appellant to submit an appeal to the next level are considered postponed up to 120 days until the completion of a previous level modification order. Thereafter, the appellant must submit his/her appeal to the next level within 30 calendar days of receiving the modification order response.

(3) If the modification order is not completed after 120 calendar days of the issuance, the appellant may submit the appeal to the next level for administrative review within 30 calendar days.

(4) If the appellant transfers prior to the completion of the modification order, the originally assigned institution or parole region shall retain responsibility for completion of the modification order as specified in subsection 3084.7(i), including cases where the receiving institution or parole region provides the actual relief.

(5) In cases where a modification order is issued on an emergency appeal, the order shall specify the timeframe for the completion of the action granted. The appeals coordinator, if granted at the second level of review, and the third level Appeals Chief or designee, if granted at the third level of review, shall notify the hiring authority by electronic transmission of the emergency timeframe for completion of the granted action.

Note: Authority cited: Section 5058 and 10006(b), Penal Code. Reference: Sections 5054 and 10006(b), Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations.

#### **3084.8. Appeal Time Limits.**

(a) Time limits for reviewing appeals shall commence upon the date of receipt of the appeal form by the appeals coordinator.

(b) An inmate or parolee must submit the appeal within 30 calendar days of:

(1) The occurrence of the event or decision being appealed, or;

(2) Upon first having knowledge of the action or decision being appealed, or;

(3) Upon receiving an unsatisfactory departmental response to an appeal filed.

(c) All appeals shall be responded to and returned to the inmate or parolee by staff within the following time limits, unless exempted pursuant to the provisions of subsections 3084.8(f) and (g):

(1) First level responses shall be completed within 30 working days from date of receipt by the appeals coordinator.

(2) Second level responses shall be completed within 30 working days from date of receipt by the appeals coordinator.

(3) Third level responses shall be completed within 60 working days from date of receipt by the third level Appeals Chief.

(d) Exception to the time limits provided in subsection 3084.8(c) is authorized only in the event of:

(1) Unavailability of the inmate or parolee, or staff, or witnesses.

- (2) The complexity of the decision, action, or policy requiring additional research.
- (3) Necessary involvement of other agencies or jurisdictions.
- (4) State of emergency pursuant to subsection 3383(c) requiring the postponement of nonessential administrative decisions and actions, including normal time requirements for such decisions and actions.
- (e) Except for the third level, if an exceptional delay prevents completion of the review within specified time limits, the appellant, within the time limits provided in subsection 3084.8(c), shall be provided an explanation of the reasons for the delay and the estimated completion date.
- (f) An appeal accepted as an emergency appeal shall be processed within the time frames set forth in subsections 3084.9(a)(4) and (a)(5).
- (g) An appeal of the involuntary psychiatric transfer of an inmate or parolee shall be made directly to the third level pursuant to subsection 3084.9(b), within 30 calendar days of receipt of the hearing decision on the need for involuntary transfer.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations.

#### **3084.9. Exceptions to the Regular Appeal Process.**

- (a) Emergency appeals. Emergency appeals should not be used by inmates or parolees as a substitute for verbally or otherwise informing staff of an emergency situation requiring immediate response.
  - (1) When circumstances are such that the regular appeal time limits would subject the inmate or parolee to a substantial risk of personal injury or cause other serious and irreparable harm, the appeal shall be processed as an emergency appeal. Emergency circumstances include, but are not limited to:
    - (A) Threat of death or injury due to enemies or other placement concerns.
    - (B) Serious and imminent threat to health or safety.
  - (2) An emergency appeal shall be submitted directly to the appeals coordinator and shall include a clear description of the circumstances warranting emergency processing. A request for emergency processing of an appeal that clearly does not meet the criteria for emergency processing or is made for the purpose of circumventing normal procedures or obtaining an expedited response may be considered misuse or abuse of the appeals process.
  - (3) If the appeals coordinator determines emergency processing is unwarranted, the inmate or parolee shall be notified and the appeal shall be processed pursuant to subsection 3084.5(b)(2).
  - (4) If emergency processing is warranted, the first level shall be waived and the second level review shall be completed within five working days.

#### **Subsection 3084.9(a)(5) is deleted.**

~~(5) If dissatisfied with the second level response, the appellant may request a third level review by resubmitting the appeal to the appeals coordinator who shall electronically transmit it to the third level Appeals Chief. The third level review shall be completed within five working days.~~

(b) Involuntary psychiatric transfers. An inmate or parolee may appeal the written decision of an involuntary psychiatric transfer, pursuant to subsection 3379(d), directly to the third level. A copy of the hearing decision shall be attached to the CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, but the absence of such documentation shall not be cause for rejection of the appeal.

(c) Joint Venture Program (JVP) employer related grievances.

- (1) Any current or former Joint Venture inmate-employee who believes he/she has a grievance regarding a wage and hour or retaliation claim against a JVP employer shall submit the written grievance to the JVP Chief.
- (2) The JVP Chief shall attempt to resolve all complaints.

(3) Time frames for filing grievances will be governed by the Division of Labor Standards Enforcement's (DLSE) statutes of limitations, including but not limited to, Labor Code section 98.7 and Code of Civil Procedure sections 337, 338, and 339, for the appropriate type of complaint.

(4) If the inmate is dissatisfied with the JVP Chief's decision, the inmate may file a complaint with the Labor Commissioner.

(d) Parole period and term computation appeals. Parole period and term computation appeals shall be reviewed at the first level by the department's records staff. The inmate or parolee must state in detail the alleged error or reason for disputing the calculation of his or her release date.

(1) Records staff shall research the relevant case factors and document the findings. If the appeal is denied, the denial shall be delivered by records staff or by the appropriate caseworker to the appellant who shall sign and date a CDC Form 1031 (8-88), Acknowledgement of Receipt.

(2) The inmate or parolee may request a Computation Review Hearing that constitutes the second level review. The inmate or parolee shall be notified at least 24 hours prior to the hearing via the CDC Form 1032 (12/86), Notice of Time, Date, and Place of Computation Review Hearing, but may sign a voluntary waiver of such notice.

(3) The inmate or parolee shall be provided a copy of the CDC Form 1033 (8-88), Computation Review Hearing Decision, at the conclusion of the hearing.

(e) California Prison Industry Authority (CALPIA) health and safety complaints.

(1) A health and safety complaint should not be used by inmates as a substitute for verbally or otherwise informing staff of an urgent health or safety situation requiring immediate response.

(2) Pursuant to Labor Code and Industrial Relations regulations, an inmate who believes a health or safety hazard exists in a CALPIA operation shall deposit a written complaint in a readily accessible complaint box or give the complaint to any CALPIA staff member who shall submit it to the CALPIA health and safety committee for review and response. The committee shall undertake all authorized levels of review and referral.

(f) Property appeals. All property loss or damage arising from the same event or action for a single appellant shall be included in one appeal.

(1) An inmate or parolee who is appealing missing/damaged property that he or she believes occurred as a result of an error made by the receiving entity or by the transportation unit during the transfer of his/her property shall submit the appeal to the appeals coordinator of the receiving institution/region.

(2) An inmate or parolee who is appealing missing/damaged property that he or she alleges occurred as a result of an error made by the sending entity during the transfer from one institution/region to another institution/region, shall submit the appeal to the appeals coordinator of the receiving institution/region who will forward it to the sending institution/region for processing.

(3) The appeals coordinator shall process the appeal for a first level response.

(A) An attempt shall be made by staff to assess the damaged property and/or conduct a thorough search to locate the missing property.

(B) An attempt shall be made by staff to research the appellant's claim utilizing departmental inmate property records.

(4) If an administrative decision is made that the department is responsible for loss or damage to the appellant's property pursuant to section 3193, an attempt by staff to use donated property to substitute for or replace lost property at no cost to the state, or any effort to repair damaged property at institution expense, will be made prior to awarding monetary compensation for the loss.

(5) An appellant's refusal to accept repair, replacement, or substitution of like items and value shall be cause to deny the appeal. When denying an appeal on this basis, the reviewer must state why the replacement offered to the appellant is considered an equivalent item and value.

(6) The provisions of subsection 3193(b) shall apply when monetary compensation is determined to be the appropriate remedy.

- (7) Before payment of any granted claim, the inmate or parolee shall discharge the state from further liability for the claim if required pursuant to Government Code section 965.
- (8) The document denying a property claim appeal shall inform the appellant of the right to submit a claim directly with the Victim Compensation and Government Claims Board and shall provide the mailing address for such filing.
- (9) An inmate or parolee who intends to submit a claim with the Victim Compensation and Government Claims Board shall adhere to the rules and timeframes governing those claims, which may be more restrictive than those of the CDCR appeals process.
- (g) Disciplinary Appeals.
- (1) A disciplinary action cannot be appealed until the hearing process is completed, including any re-hearing.
- (2) Inmates who wish to exhaust their administrative remedies for “serious” disciplinary issues pursuant to section 3315 must appeal through the third level of review.
- (h) Transfer Appeals. A decision for transfer to another institution may be appealed by the affected inmate after the transfer endorsement by the classification staff representative.
- (1) Filing of an appeal of a transfer decision shall not normally be cause to stay or delay a transfer except in extraordinary circumstances and at the discretion of the Warden or designee.
- (2) Regular transfer appeals:
- (A) The first level of appeal shall be waived.
- (B) If the appeal is granted at second level, the appellant’s case shall be presented to a second classification staff representative for reconsideration.
- (C) If the second classification staff representative disagrees with institution’s recommendation, the institution head may submit the case to the departmental review board for final decision.
- (D) If the appeal is denied at second level or the institution head does not refer the case to the departmental review board, the appellant may appeal at the third level.
- (3) Reception center transfer appeals:
- (A) First level review shall be conducted by the reception center’s correctional administrator.
- (B) If the appeal is granted, the appellant may be retained at the reception center until the case is presented to a second classification staff representative only if the proposed transfer poses a threat to the health or safety of the appellant.
- (C) If the second classification staff representative disagrees with the first level appeal decision, the appellant may resubmit the appeal for second level review.
- (D) Second level review shall be conducted by the institution head, who may retain the appellant at the reception center as a second level review action and refer the appeal to the departmental review board for resolution. The board’s decision shall constitute final review.
- (i) Staff complaints. A staff complaint filed by an inmate or parolee shall be processed as an appeal pursuant to this Article, not as a citizen’s complaint. However, any appeal alleging misconduct by a departmental peace officer as defined in subsection 3291(b) shall be accompanied by the subsection 3391(d) Rights and Responsibility Statement.
- (1) An inmate or parolee alleging staff misconduct by a departmental employee shall forward the appeal to the appeals coordinator. Only after the appeal has been reviewed and categorized as a staff complaint by the hiring authority or designee at a level not below Chief Deputy Warden, Deputy Regional Parole Administrator, or equivalent level shall it be processed as a staff complaint. If the hiring authority makes a determination that the complaint shall not be accepted as a staff complaint, it shall be processed as a routine appeal pursuant to subsection 3084.5(b)(4)(A).
- (2) When an appeal is accepted alleging staff misconduct that also includes any other issue(s), the appeals coordinator at the time the appeal is accepted as a staff complaint shall notify the inmate or parolee that any other

appeal issue(s) may only be appealed separately and therefore resubmission of those issues is required if the intention is to seek resolution of such matters. Upon receiving such a notice, the inmate or parolee has 30 calendar days to submit separate appeal(s) regarding the other issue(s).

(3) All appeals alleging staff misconduct will be presented by the appeals coordinator to the hiring authority or designee within five working days. The hiring authority will review the complaint and determine if:

(A) The allegation warrants a request for an Internal Affairs investigation as the alleged conduct would likely lead to adverse personnel action. The case will be referred for an Internal Affairs investigation as instructed by the hiring authority.

(B) The allegation does not warrant a request for an Internal Affairs investigation in which case a confidential inquiry shall be completed by the reviewer. An inquiry shall be conducted whenever the appeal is designated as a staff complaint but is not referred to the Office of Internal Affairs (OIA) or when the matter is declined by the OIA.

1. A confidential report shall summarize the review and include a determination of the findings concerning the allegation. This document shall not be provided to the appellant. It shall be kept in the appeal file in the Appeals Office and no other copies shall be kept or maintained except as herein described or as needed for Third Level review or litigation. This document is strictly confidential to all inmates and any staff except those involved in the inquiry process or litigation involving the department.

2. The accused staff may review the confidential report in the appeals office upon approval of the litigation coordinator, but if any information relating to other staff is contained in the confidential document, a copy shall be made and that information redacted prior to the review. Neither the original nor the copy shall leave the appeals office except as required for litigation and any redacted copy shall be placed with the original after review.

3. The assigned reviewer will interview the appellant and as many witnesses as necessary to reach a determination concerning the allegation. The subject(s) of the staff complaint may be interviewed by a person trained to conduct administrative interviews and will be given notice of the interview at least 24 hours prior to the interview. If the subject chooses to waive the 24-hour requirement, he/she must indicate this at the time they are given notice. If waived, the subject may be interviewed immediately.

4. A confidential inquiry shall review the information available to determine whether policy was violated.

(4) The institution's appeal response to a staff complaint shall inform the appellant of either:

(A) The referral for investigation and the status of the investigation. Additionally, the appellant shall be notified of the outcome at the conclusion of the investigation.

(B) The decision to conduct a confidential inquiry and whether the findings determined that the staff in question did or did not violate departmental policy with regard to each of the specific allegation(s) made.

(5) A staff complaint alleging excessive or inappropriate use of force shall be addressed pursuant to the procedures described in sections 3268 through 3268.2.

(6) An appeal alleging staff misconduct by an appeals coordinator shall be reviewed by the hiring authority for determination of processing.

Note: Authority cited: Section 5058 Penal Code, Section 6304.3 Labor Code. Reference: Sections 148.6, 832.5, 832.7, 832.8, 5054, and 5058.4, Penal Code; Sections 935.6, 965, 3300-3313, 19570-19575.5, 19583.5, 19635 Government Code; Sections 98.7 and 6304.3 Labor Code; Sections 337, 338 and 339, Code of Civil Procedure; Sections 344.40, 344.41, 344.42 and 344.43, Title 8, Industrial Relations, California Code of Regulations; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; *Wolff v. McDonnell* (1974) 418 U. S. 539, 558-560; *Vasquez v. State of California*, 105 Cal.App.4th 849 (2003) as implemented by the Stipulated Injunction and Order entered by the Superior Court of San Diego County in Case No.GIC-740832.

### **3085. Americans with Disabilities Act.**

Explanation: Departmental compliance with the Americans with Disabilities Act (ADA) is currently under the supervision of federal courts as specified in Court Ordered Remedial Plans articulated in the *Armstrong v.*

*Schwarzenegger* (previously: *Armstrong v. Davis*) case. Accordingly, departmental ADA practices, including offender ADA appeal rights are currently carried out in accordance with an Armstrong Remedial Plan (ARP) established by the court of jurisdiction.

Note: *Armstrong v. Schwarzenegger* (2002) USDC -ND (No. C-94- 2307-CW); Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

**Under Chapter 1, new Article 8.5 is adopted.**

**Article 8.5. Written Request Process.**

**3086. Inmate/Parolee Request for Interview, Item or Service.**

(a) Inmates and parolees may request interviews with staff and/or request items and services via a written request process. The objectives of timely resolution of routine matters through an effective and non-conflictive communication process shall be facilitated by the practices set forth in this article, which shall be henceforth applied uniformly toward that end. Department staff shall attempt to resolve inmate and parolee issues expeditiously.

(b) The written request process may be used when the inmate or parolee seeks a response to an issue or concern related to his or her confinement or parole.

(c) The department shall ensure that inmates and parolees will have access to the CDCR Form 22 (10/09), Inmate/Parolee Request for Interview, Item or Service, which is incorporated by reference. This form shall be made readily available in:

(1) All inmate housing units, general or segregated.

(2) All institutional libraries.

(3) Any facility under the department's jurisdiction, whether residential or medical, where inmates are required to remain more than 24 hours.

(4) All parole field offices.

(d) The Inmate/Parolee Request for Interview, Item or Service form will provide:

(1) A written method for an inmate or parolee to address issues and concerns with staff and/or to request items and services.

(2) A record of the date the form was first presented to staff, and the date of each staff response.

(e) When seeking response to a written request for an interview, item, or service, the inmate or parolee shall complete the Request for Interview, Item or Service form to describe his or her request. The inmate shall deliver or mail via institutional mail the completed form to any staff member who is able to respond to the issue. The parolee shall deliver or mail via the United States Postal Service the completed form to his or her parole agent, who shall respond to the issue or, as appropriate, route the form to another staff member who is able to respond to the issue.

(1) If the inmate or parolee mails the form, the receipted copy of their request may also be returned by staff via the mail.

(2) As the written request process does not stay the time constraints for filing an appeal, the inmate or parolee is not precluded from filing an appeal on the same issue prior to receiving a response to their written request. However, the appeal may be rejected by the appeals coordinator or designee with instructions to complete the request form process before resubmitting the appeal.

(f) Upon receipt of an inmate or parolee completed Request for Interview, Item or Service form, the employee shall:

(1) Accept, date and sign the form.

(2) Provide to the inmate or parolee the bottom copy of the employee signed form, which shall serve as the inmate's or parolee's receipt to verify the date of submittal. The employee, at his or her discretion, can respond to the request at this time or wait until he or she has more time to respond within the constraints of this article.

(3) The receipt of an inmate- or parolee-completed form does not preclude a staff member from forwarding the document to a more appropriate responder; however, employees shall either deliver the form to the staff member or place it in institutional mail addressed to the intended staff member within 24 hours.

(4) Within three working days after receipt of the form, the responding employee shall:

(A) Note his or her decision or action on the form.

(B) Sign and date the form.

(C) Retain a copy for his or her records.

(D) Return the original and remaining copy of the form to the inmate or parolee.

(g) If the inmate or parolee is dissatisfied with or disagrees with the staff member's response, he or she may submit the Request for Interview, Item or Service form to the employee's supervisor for review, while retaining a copy for his or her records. Only in the absence of the staff member's supervisor may the inmate or parolee submit the form to another supervisor of the office or unit in question.

(h) Within seven calendar days of receipt of the Request for Interview, Item or Service form, the supervisor shall:

(1) Indicate a decision or action on the form.

(2) Sign and date the form.

(3) Ensure a copy is made and retained in the facility records for a period no less than prescribed for inmate correspondence in the approved departmental records retention schedule.

(4) Return the original to the inmate or parolee.

(i) An inmate or parolee's documented use of a Request for Interview, Item or Service form does not constitute exhaustion of administrative remedies as defined in subsection 3084.1(b).

Note: Authority cited: Section 5058 Penal Code. Reference: Sections 148.6, 832.5, and 5054, Penal Code; Section 19583.5 Government Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; Wolff v. McDonnell (1974) 418 U. S. 539, 558-560.

### **3137. Appeals Relating to Mail and Correspondence.**

**Subsection 3137(a) is unchanged.**

**Subsection 3137(b) now reads:**

(b) Inmates shall use the established inmate appeal procedures as provided in section 3084, et seq. An inmate's submittal of an appeal within 30 calendar days of a notice that mail is being designated as undelivered will postpone any disposition of the mail until an appeal decision is made at the third level of the appeal review. If the inmate's appeal is denied at the third level of appeal review, the item of mail shall be disposed of as provide in subsection 3191(c).

**Subsection 3137(c) is unchanged.**

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2600 and 2601, Penal Code; and In re Muszalski, 52 Cal App. 3<sup>rd</sup> 500.

#### **3173.1 Visiting Restrictions with Minors.**

**Subsections 3173.1 (a) through (f) are unchanged.**

**Subsection 3173.1(g) now reads:**

(g) If an inmate disagrees with the decision of a classification committee, the inmate may file an inmate grievance via the CDCR Form 602 appeal process as outlined in sections 3084 through 3084.9.



NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1202.05, 5054 and 5054.2, Penal Code; Section 362.6, Welfare and Institutions Code; and *People v. Glass* (2004) 114 Cal. App. 4<sup>th</sup> 1032.

### **3179. Appeals Relating to Visiting.**

#### **Subsection 3179(a) now reads:**

(a) Inmates, and approved inmate visitors, and visiting applicants may appeal in writing department policies, staff decisions, and institution/facility procedures relating to visiting.

(1) Inmates shall use the established inmate appeal procedures as provided in sections(s) 3084 through 3084.9.

(2) All appeals by approved inmate visitors and visiting applicants relating to visiting shall be submitted to the institution head.

#### **Subsections 3179(b) through (d) are unchanged.**

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

### **3193. Liability.**

#### **Subsection 3193(a) is unchanged.**

#### **Subsection 3193(b) now reads:**

(b) The department shall accept liability for the loss or destruction of inmate personal property when it is established that such loss or destruction results from employee actions. Inmates shall utilize the inmate appeal process if unable to resolve a personal property claim pursuant to section 3084.1. Upon acceptance of liability, the department shall provide to the inmate similar items of equal or greater value when such items are available via donated property items consistent with sections 3084.9 and 3191(c). If donated items are not available, monetary compensation to the inmate for such loss shall not exceed either the dollar value assigned to the item or items at the time the inmate received authorization to possess the property; the cost of the item, verified by receipt; or the replacement value for the item or a similar item, as determined by the department. Staff recommendations to the Victim Compensation and Government Claims Board regarding monetary reimbursement will be made accordingly.

#### **Subsection 3193(c) is unchanged.**

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2085, 2600, 2601, 5062 and 5063, Penal Code.

### **3220.4. Movies/Videos for Inmate Viewing.**

#### **Subsections 3220.4(a) and (b) are unchanged.**

#### **Subsection 3220.4(c) now reads:**

(c) The selection or exclusion of a movie/video by a facility may be challenged by members of the public by writing to the director, appealed by inmates by following the appeal process as stated in section 3084 et seq., and grieved by staff by pursuing grievance procedures in accordance with their collective bargaining unit's contract and/or memorandum of understanding.

#### **Subsections 3220.4(d) through (f) are unchanged.**

NOTE: Authority cited: Section 5058 and 10006(b), Penal Code. Reference: Sections 2601(c), 5054, and 10006(b), Penal Code.

### **3482. Joint Venture Program Contracts.**

#### **Subsections 3482(a) through 3482(a)(12)(H) are unchanged.**

#### **Subsection 3482(a)(12)(I) now reads:**

(I) Compliance with the requirements of the department's approved inmate appeal procedures as required by Title 15, California Code of Regulations (CCR) Sections 3084 through 3084.9 or relevant Labor Code provisions.

**Subsections 3482(a)(12)(J) through 3482(a)(13) are unchanged.**

**Subsections 3482(b) through 3482(d) are unchanged.**

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.5, 2717.6 2717.8 and 5054, Penal Code; Section 5, Article XIV of the State Constitution; and *Vasquez v. State of California*, 105 Cal. App.4<sup>th</sup> 849 (2003), Stipulated Injunction and Order, Superior Court of San Diego County, Case No. GIC-740832.

**3630. Limitations of Parole Services.**

**Subsections 3630(a) and (b) are unchanged.**

**Subsection 3630(c) now reads:**

(c) A determination that an alien is ineligible for the services specified in subdivision (a) may be appealed as provided in Sections 3084 through 3084.9 of these regulations.

**Subsections 3630(d) and (e) are unchanged.**

NOTE: Authority cited: Section 5058, Penal Code. Reference: 8 U.S.C. Sections 1621, 1641 and 1642; Section 297.5 Family Code; and Section 5054, Penal Code.

**3723. Parolee Rights.**

**Section 3723 now reads:**

The parolee shall receive a copy of the discharge review decision, including the reasons for a decision not to discharge the parolee, if applicable. The parolee may appeal any mistake of fact contained in the discharge review report pursuant to the appeals process provided in sections 3084 – 3084.9. If a mistake of fact is substantiated and that mistake results in a change in the recommendation to retain on parole, the corrected discharge review report with the recommendation to discharge shall be corrected and submitted to the Board of Parole Hearings with a request to reconsider the decision to retain.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.